Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 75-1638

HORACE V. KELL, et al, APPELLANT

v.

NICK P. CHIVILIS, et al, APPELEE

APPEAL FROM THE SUPREME COURT of GEORGIA

Appendix to
STATEMENT AS TO JURISDICTION

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TO

APPENDIX TO STATEMENT AS TO JURISDICTION

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30520. CHIVILIS, Commissioner v. KELL et al

30620. KELL et al v. DOUGLAS COUNTY, GEORGIA et al

Jordan, Justice.

Kell and others, taxpayers of Douglas County, filed their complaint, as amended against the County of Douglas and named officers thereof, and the State Revenue Commissioner, in which they alleged that the assessed values of their properties as returned by them have been arbitrarily changed and increased by the Tax Assessors for the 1974 ad valorem tax digest as the result of an illegal and nonunform scheme, plan, and practice to increase tax assessments in Douglas County. Particulars were detailed of the methods used which resulted in the alleged lack of uniformity. This lack of uniformity was asserted as between individual taxpayers in Douglas County; individual taxpayers in Douglas County who returned their properties to the county and those who returned their properties to the State Revenue Commissioner; and individual taxpayers in Douglas County and individual taxpayers in the remainder of the State.

The original complaint sought to enjoin the Tax Commissioner from forwarding the proposed 1974 digest to the State Revenue Commissioner for approval. Prior to the

hearing on the temporary injunction, the digest was submitted to the State Revenue Commissioner and approved by him. Thereafter the State Revenue Commissioner was named as a party defendant. The complaint as amended sought to permanently enjoin the implementation of the tax digest and a levy of taxes thereon until the digest is corrected; to declare the rights of the taxpayers; to declare certain statutes unconstitutional; and other relief.

After hearing evidence the trial judge found that the Douglas County digest was not invalid as a result of the failure of the State Revenue Commissioner to equalize classes of property within the county; that the term "fair market value" and the use thereof have not resulted in a lack of uniformity in the county; and that the use of the ratio study statute does not destroy uniformity as between taxpayers of the county. He further held that there has been no substantial lack of uniformity in the assessment of property between individual taxpayers in Douglas County; the taxpayers are not treated unequally, and do not pay a disproportionately higher percentage of Douglas County taxes because railroads and public utilities have their properties apportioned across the several counties of the State; the taxpayers

of Douglas County are being treated in an equal manner in the equalizing of property for ad valorem tax purposes as between the counties by the State Revenue Commissioner.

The trial judge temporarily restrained the defendants from collecting the 1/4 mill tax levy upon taxpayers of Douglas County for State purposes; and from collecting interest upon 1974 tax executions in excess of 7% per annum. All other temporary injunctive relief was denied.

The State Revenue Commissioner appeals from that portion of the order temporarily restraining the defendants from collecting the 1/4 mill State tax levy.

The taxpayers appeal from the portion of the order denying temporary injunction as to the collection of 1974 taxes due Douglas County.

1. In Tax Assessors v. Chitwood, 235 Ga. 147 *218 SE2d 759) (1975), this court held that a county board of equalization, pursuant to Code Ann. 92-6912 (5) (A) and (4) (B) (Ga. L. 1972, pp. 1094, 1095), has full authority to fashion an adequate and appropriate legal remedy to redress grievances of taxpayers regarding the valuation of individual parcels of land and the uniformity of the county tax assessments. See also Grafton v. Turner, 227 Ga. 809 (183 SE2d 458) (1971).

The trial judge, therefore, did not err in holding that the taxpayers had no right to injunctive relief because of the alleged failure of the Douglas County Tax Assessors to make uniform assessments as between individual taxpayers in Douglas County.

2. The taxpayers' enumerated erros and arguments pertaining to the trial judge's finding that they were not unequally treated in comparison with railroads and public utilities who make their returns to the State Revenue Commissioner are: (a) tha the trial judge found that the properties of railroads and public utilities are assessed in Douglas County at 40% of fair market value and the land in Douglas County is assessed at 100% of fair market value; and (b) the term "fair market value" violates the due process clause of the Constitution because it is too vague and indefinite to be enforceable.

There is no merit in these contentions.

(a) The properties of individual taxpayers who make their returns to the county, and the properties of railroads and public utilities who make their returns to the State Revenue Commissioner are returned at 100% fair market value and placed on the tax digest at 40% of fair market value. There is no lack

of uniformity in the laws pertaining to both classes of taxpayers. Ogletree v. Woodward, 150 Ga. 691 (105 SE 243) (1920).

The trial judge's finding of fact is not subject to the interpretation placed on it by the taxpayers. He found that both classes of property were valued at 100% of fair market value and assessed for tax purposes at 40% of fair market value.

(b) The definition of "fair market value" which existed at the time of the assessments in the present case (Code 92-5702, as amended by Ga. L. 1968, p. 358) was not too vague and indefinite to be enforced.

3. It was not error for the trial judge to hold that the use of the ratio study statute (Code Ann. 92-7008 et seq.; Ga. L. 1970, p. 542, 1972, p. 829) did not destroy uniformity as between the taxpayers of the county.

4. The trial judge did not err in holding that the digest was not invalid as the result of the failure of the State Revenue Commissioner to equalize classes of property within the county. Griggs v. Greene, 230 Ga. 257 (3) (197 SE2d 116) (1973).

5. The trial judge found from the evidence that taxable property in five

counties surrounding Douglas County was assessed at lower valuations than that in Douglas, resulting in discrimination against property owners in Douglas County and the payment by them of a higher State tax than the residents of the surrounding counties.

Code Ann. 92-7001 (Ga. L. 1966, pp. 45, 46; 1970, pp. 91, 92; p. 642; 1972, p. 1974) requires the State Revenue Commissioner to examine the tax digests of the counties of the State and to require adjustments in the digests in order to equalize the values of property throughout the State.

In Griggs v. Greene, 230 Ga. 257 (4) (197 SE2d 116) (1973) this court held: "The Acts referred to in the foregoing headnote [Code Ann. 92-7001 through 92-7002.1] are not violative of the due process and equal protection provisions of the State and Federal Constitutions by reason of their failure to provide either singly or collectively for notice and an opportunity to be heard to individual taxpayers in counties where adjustments of individual assessments are effected by reason of an order of the revenue commissioner directing a percentage adjustment in the digest of the county as to the whole class of tangible property." There was an ex-

tensive quotation in the Griggs case, at page 270, from Ogletree v. Woodward, 150 Ga. 691, supra, in which this court discussed the impracticability of individual taxpayers being heard on decisions made by the (then) State tax commissioner in requiring an adjustment of the county digest. It was pointed out that any objection to an adjustment in the digest must come from the county tax assessors.

The same reasoning applies to a question concerning the proper adjustment of values in a county digest in comparison with other counties of the State. It would create a chaotic condition in the tax affairs of the State if individual taxpayers in each of the counties had the right to challenge the factual decisions of the State Revenue Commissioner in equalizing "as far as practicable" (Code Ann. 92-7001 (b)) the values of property subject to taxation in the State.

The holding in Griggs v. Greene, 230 Ga. 257 (3), supra, and cases following it, that injunction was proper to enjoin the enforcements of orders of the State Revenue Commissioner subdividing classes of property in an unconstitucnal manner for adjustments in county digests, is not in point here. Here the duty of the State Revenue Commissioner

to equalize the digests is acknowledged, but it is asserted that he performed his duty in an improper manner. If objection is made to the exercise of the discretion of the State Revenue Commissioner in equalizing digests, it must come from the county, and not from individual taxpayers.

It was error for the trial judge to enjoin the enforcement of the State's 1/4 mill levy.

Judgment affirmed in part and reversed in part. All the Justices concur.

Georgia Laws 1909, p. 72 (Ga. Code Ann. 92-5701)

"All property shall be returned for taxation at its fair market value."

Georgia Laws 1909, p. 75; Georgia Laws 1968, p. 358; Georgia Code Ann. 92-5702

"The intent and purpose of the tax laws of this state are to have all property and subjects of taxation returned at the value which would be realized therefrom by cash sale, as such property and subjects are usually sold, but not by forced sale thereof, and the words "fair market value", when used in the tax laws, shall be held and deemed to mean what the property and subjects would bring at cash sale when sold in the manner in which such property and subjects are usually sold."

Georgia Laws 1968, pp. 358, 359; Georgia Code Ann. 92-5703

"All tangible property subject to taxation by the State, and county, or any other taxing jurisdiction shall be returned by the taxpayers as provided by law at its fair market value and shall be assessed at 40 per cent of said fair market value on a levy made by each respective taxing jurisdiction. The levy for State taxation shall be made by the Governor with the assistance of the State Revenue Commissioner.

It is the intent and purpose of the General Assembly of this State that the value of tangible property as referred to in the tax laws of this State shall be 40 per cent of the fair market value of such property. The requirement contained herein that all municipal corporations assess at 40 per cent of fair market value shall not apply to any municipal corporation whose ratio of assessed value to fair market value exceed 40 per cent for the tax year 1971; provided, however that any municipal corporation so exempted shall in no event assess at a ratio less than 40 per cent."

Georgia Laws 1889, p. 29; Georgia Code Ann. 92-2703

"Whenever such certificate (of county tax levy) is received by the State Revenue Commissioner, he shall proceed to assess the amount of each railroad company's property, in each of said counties, in the following manner: First, it shall be assessed upon the property located in each county, upon the basis of the value given by the returns. Second, the amount of tax to be assessed upon the rolling stock and other personal property is as follows: As the value of the property located in the particular county is to the value of the

whole property, real and personal, of the said company, such shall be the amount of rolling stock and other personal property to be distributed for taxing purposes to such county. The value of the property located in the county and the sahre of the rolling stock and personal property thus ascertained, and apportioned to each of such counties, shall be the amount to be taxed to the extent of the assessment in each county."

Georgia Laws 1889, p. 29; Georgia Laws 1917, p. 197; Ga. Code Ann. 92-2704

"Whenever the State Revenue Commissioner shall ascertain and levy in the manner specified the amount of tax due by such company to each of such counties, it shall be his duty at once to notify the president and treasurer of such railroad company of the amount due in each of said counties for county taxes of said railroads...."

Georgia Laws 1889, p. 29; Georgia Laws 1916, p. 34; Georgia Laws 1927, p. 136; Ga. Code Ann. 92-2706

"If any railroad company desires to dispute its liability to such county tax, it may do so by an affidavit of illegality, to be made by the president of said railroad or other office thereof having

having knowledge of the facts in the same manner as other affidavits of illegality are made, and shall be returned for trial to the Superior Court of the county where such tax is claimed to be owing and where it is sought to be collected, where such cases shall be given precedence for trial over all other cases, except tax cases in which the State shall be a party."

Georgia Laws 1927, p. 97; Georgia Laws 1935, p. 64; Ga. Code Ann. 92-5902

"All persons or companies owning or operating railroads, street railroads, suburban railroads, or sleeping cars in this State, all persons or companies, including railroad companies, doing an express, telephone or telegraph business (except small telephone companies, or persons doing a telephone business, whose capital stock or property is of less value than $5,000); all persons or companies doing a gas, water, electric light or power, hydro-electric power, steam heat, refrigerated air, dockage, cranage, canal, toll-road, toll-bridge, railroad-equipment, or navigation business, through their presidents, general managers, owners or agents having control of the companies' offices in this State, shall be required to make annual tax

returns of all property located in this State to the State Revenue Commissioner; and the laws now in force providing for the taxation of railroads in this State shall be applicable to the assessments of taxes on the businesses above stated." Georgia Laws 1972, p. 1119; Ga. Code Ann. 92-5903

"....Each taxpayer required to return his property to the State Revenue Commissioner for taxation shall under rules and regulations promulgated by the State Revenue Commissioner apportion the value of its various properties to this ..... and between the several tax jurisdictions in this ..... Provided, that any reasonable value directly attributable to property physically located in one Georgia jurisdiction shall not be apportioned to any other Georgia jurisdiction." Georgia Laws 1877, p. 126; Georgia Laws 1905, p. 68; Georgia Laws 1972, p. 1123; Ga. Code Ann. 92-6001

"The State Revenue Commissioner shall carefully scrutinize the returns made to him, and if in his judgment the property embraced therein is returned below its value ..... he shall correct the same and assess the value from any information he can obtain."

Georgia Laws 1970, pp. 542, 543; as amended by Georgia Laws 1972, pp. 829-831; Ga. Code Ann. 92-7008

"The State Auditor shall establish ... an equalized adjusted school property tax digest for each county ....(which) shall be established and maintained as follows:

....(f) Establish no later than October 30, 1971, and thereafter as provided herein, for each county in the State, the average ratio of assessed value to true value of county property subject to taxation for school purposes, excluding public utility property, by establishing the ratio of assessed value to sales price for a representative number of parcels of real property, title to which was transferred during a preceding period of time, to be determined by the Auditor, and the average ratio of assessed value to sale price for the county as a whole based upon a representative number of usable transactions studied ... the Auditor shall supplement realty sales price data available in any county with actual appraisals of a represenative number of parcels of farm property and industrial and commercial property located within the county, the title to which was not transferred

within the period of time determined by the Auditor ... the Auditor shall use the same ratio for other personal property excluding motor vehicles and bank stock within the county as is finally determined for real property within the county."

MOTION FOR REHEARING

Come now Horace V. Kell, et al, appellees in case No. 30520 and appellants in case No. 30620, and within the time allowed by law, file this their motion for rehearing in the case stated and, for grounds thereof, say:

1. This court, and the trial court, deprived movants of their property rights without due process of law and deprived them of equal protection of the laws, as hereinafter set out, by the holding (in division one of this court's opinion) that movants have an adequate and appropriate legal remedy regarding the valuation of individual parcels of land and the uniformity of the county tax assessments.

They are deprived of due process of law, contrary to the 14th Amendment to the Constitution of the United States because:

(a) Movants (and others similarly situated) who did not have their parcels of land unequally assessed by defendants because of changes in their own assessments, but by changes in the assessments of other taxpayers have no right to appeal to the county board of equalization because they receive no notices from which to appeal.

(b) Movants (and others similarly situated) whose assessments were out of uniformity and equality with assessments of those persons making their returns to the State Revenue Commissioner, have no way, under the law, to have their assessments made uniform with the assessments of such persons; and in fact have no way to determine what the property of such persons is assessed at.

(c) Separate consideratwon and determination of the returns of those persons making their returns of property for ad valorem tax purposes to the State Revenue Commissioner and the movants who make their returns to the County Board of Tax Assessors, is "unequal" and "non-uniform" per se.

2. Division 2 of the opinion of this court, and the same ruling by the trial court, deprives movants of their property rights without due process of law under the 14th Amendment to the United States Constitution in the following respects, to-wit:

(a) The trial court found, as a matter of fact, that property in Douglas County was on the digest at 100% of fair market value; while the property of public utilities, et al, were assessed at 40% of fair market value. This finding required a finding under the law there was

a lack of uniformity and equality which discriminated against movants.

(b) The evidence before the trial court, and this court required a finding that the standard of "fair market value" for the assessments of property for taxation per se, and as implemented in Georgia as shown by the evidence, is too vague and indefinite to be legally enforced.

3. The third division of the opinion of this court, and the ruling of the trial judge that the use of the ratio study statute did not destroy uniformity as between movants and other taxpayers deprives movants of their property without due process of law and violates the 14th Amendment to the Constitution of the United States in that owners of personal property are taxed as a result of studies made of sales and appraisals of real property, which in their nature are inapplicable and prejudicial to establishment of values of personal property.

4. The fourth division of the opinion of this court, and the same holding by the trial judge that the failure of the State Revenue Commissioner's failure to equalize assessments of property within the county did not render the digest invalid deprived the movants of

their property without due process of law contrary to the 14th Amendment to the Constitution of the United States.

5. The fifth division of the opinion of this Court which reversed the decision of the trial court in granting movants an injunction as to collection of the 1/4 mil State Tax deprives movants of their property rights without due process of law in that it leaves the citizen at the mercy of the State Revenue Commissioner without a remedy and without a process of law to question and correct his unlawful and unconstitutional actions in approving the tax digests of the various counties in Georgia without making them equal and uniform as to assessments.

6. The errors hereinabove itemized also deprived movants of the equal protection of the laws in violation of the 14th Amendment to the Constitution of th United States, and further in violation of the 5th Amendment to the Constitution of the United States as set out hereinabove.

7. In the various divisions of the opinion of this Court set out hereinbefore, and in its judgment of affirmance in Case No. 30620 and reversal in Case No. 30520, this court overlooked the evidence requiring an opposite

judgment and findings; and further overlooked the laws, decisions, and constitutional provisions cited in movants' brief.

Wherefore, movants pray that a rehearing be granted in this case, and the decision of the court reversed in each instance.

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GEORGIA, POLK COUNTY.

I, Marson G. Dunaway, Jr., of counsel for movants, do certify that, upon careful examination of the opinion of the court in this case, I verily believe that the facts stated and the evidence quoted in the foregoing Motion for Rehearing have been overlooked by the Court, which facts are material, and, if considered would require a different judgment from that rendered, in each case.

This 9th day of February, 1976.

Marson G. Dunaway, Jr.

No. 30620
SUPREME COURT OF GEORGIA
Atlanta, February 11, 1976

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Horace Kell et al v. Douglas County, Georgia, et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,
CLERK'S OFFICE, ATLANTA

No. 30520
SUPREME COURT OF GEORGIA
Atlanta, February 11, 1976

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Nick P. Chilivis, Comr., v. Horace Kell et al

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,
CLERK'S OFFICE, ATLANTA

NOTICE OF APPEAL TO U. S. SUPREME COURT

I. Notice is hereby given that HORACE V. KELL, et al, appellants in Case # 30620 and appellees in Case No. 30520, which cases were consolidated for hearing and decision, hereby appeal to the SUPREME COURT OF THE UNITED STATES from the judgment of this Court affirming the judgment of the trial court in case # 30620 and reversing the judgment of the trial court in case # 30520, entered on the 28th day of January, 1976, in which cases a motion for rehearing was overruled by this Court on February 11, 1976.

This appeal is taken pursuant to: 28 UNITED STATES CODE, Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. The original complaint, omitting process and entry of service.

B. The answer and motion to dismiss filed by the original defendants on the 6th day of March, 1975.

C. The plaintiff's amendment and motion filed on the 18th day of March, 1975.

D. The defenses of State Revenue Commissioner filed on the 8th day of April, 1975.

E. The motion to dismiss filed by State Revenue Commissioner on the 8th day of April, 1975.

F. The amendment to complaint filed by plaintiffs on the 14th day of April, 1975.

G. The answer of Douglas County, Ga., et al to the amendment of plaintiffs, filed on the 24th day of April, 1975.

H. The Motion to Intervene and answer, filed by Douglas County Board of Education on the 18th day of February, 1975, with court order thereon dated February 18, 1975.

I. The order of the trial Court dated July 3, 1975, granting a temporary injunction as to the State levy of tax and denying an injunction as to the County tax digest.

J. The Notice of Appeal filed in trial Court by plaintiffs on the 23rd day of July, 1975.

K. The Notice of Appeal filed by defendant State Revenue Commissioner of Georgia on the 4th day of August, 1975.

L. The Notice of Cross Appeal filed by plaintiffs on the 19th day of August 1975.

M. The Enumeration of Errors filed in this Court by State Revenue Commissioner in case # 30520.

N. The Enumeration of Errors filed in this Court by plaintiffs in case # 30620.

O. Briefs of Appellant and Appellees in Case # 30520.

P. Briefs of Appellant and Appellees in case # 30620.

Q. Transcript of the Evidence filed in this Court.

R. The Judgment of the Supreme Court in these cases rendered on January 28, 1976, affirming the trial Court in Case # 30620 and reversing the Trial Court in case # 30520.

S. The Motion for Rehearing filed by plaintffs in Case # 30620, appellees in case # 30520.

T. The Judgment of this Court overruling the Motion for Rehearing, dated February 11, 1976.

III. The questions presented by this Appeal are:

1. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the Constitution of the United States by the decision that they have an adequate and complete remedy at law to challenge the uniformity of their tax assessments when they are not entitled to appeal inequalities created by the changes made in the returns of other taxpayers,

but only changes made in the returns of appellants?

2. Were appellants deprived of their property without due process of law by the decision upholding procedures set out in Georgia taxing statutes which authorizes and requires railroads and public utilities companies to make their property tax returns to, and have their assessments adjusted by, the State Revenue Commissioner; while at the same time authorizing and requiring appellands to make their returns to, and have their assessments adjusted by, local Board of Tax Assessors, and no method of contesting the equality and uniformity of such assessments is provided by law?

3. Were appellants deprived of their property without due process of law contrary to the 14th Amendment to the United States Constitution by the decision that ratified and confirmed a tax digest in which the Court found, as a matter of fact, that appellants property was assessed at 100% or more of fair market value, while property of public utilities was assessed at 40% of fair market value?

4. Is the standard "fair market value" established by Georgia taxing statutes too vague and indefinite per se (or as

implemented) so as to make such statutes unconstitutional because violative of the 14th Amendment to the United States Constitution?

5. Are Georgia taxing statutes providing for the use of a "ratio study" of real estate sales as a standard for appraising and assessing personal property violative of the 14th Amendment to the Constitution of the United States?

6. Did failure of the State Revenue Commissioner to equalize the assessments of property within Douglas County as required by Statutes, deprive appellants of their property rights without due process of law, contrary to the 14th Amendment to the Constitution of the United States?

7. Did the Supreme Court judgment reversing the trial court's enjoining the 1974 State of Georgia tax levy in Douglas County in spite of the lack of a remedy or process to question and correct the State Revenue Commissioner's failure to examine and make uniform the tax digests of the various counties in Georgia, deprive appellants of their property without due process of law contrary to the 14th Amendment to the United States Constitution?

8. Did the actions and decisions set out above violate the equal protection

requirements of the 14th Amendment to the Constitution of the United States, and the 5th Amendment to the Constitution of the United States?

Respectfully submitted,
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